

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

JEROME LEE CROSS,

Petitioner,

v.

KINGS COUNTY SHERIFF,

Respondent.

Case No. 1:23-cv-01246 JLT SAB (HC)

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DENYING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE CERTIFICATE OF APPEALABILITY**

(Doc. 12)

Jerome Lee Cross is proceeding *pro se* with a petition for writ of habeas corpus brought pursuant to 28 U.S.C. § 2254, on two claims for relief: (1) insufficiency of evidence to convict him and (2) a jury instruction error. (Doc. 1.)

The magistrate judge found Petitioner was not entitled to habeas relief on his first claim, because the “state court’s decision denying Petitioner’s sufficiency of evidence claim was not contrary to, or an unreasonable application of, clearly established federal law.” (Doc. 12 at 14.) In addition, the magistrate judge found the state court’s decision was not “so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.” (*Id.*, citation omitted.) The magistrate judge found Petitioner was “procedurally barred” from bringing his claim for a jury instruction error. (*Id.* at 15.) Further, the magistrate judge determined Petitioner’s instructional error “claim is without merit,” and he was “not entitled to habeas relief on his second claim. (*Id.* at 15-16.) Therefore,

1 the magistrate judge recommended the petition for writ of habeas corpus be denied. (*Id.* at 17.)

2 The Court served the Findings and Recommendations on Petitioner and notified him that
3 any objections were due within 30 days. (Doc. 12 at 17.) The Court advised Petitioner the
4 “failure to file objections within the specified time may waive the right to appeal the District
5 Court’s order.” (*Id.*, citing *Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir. 2014).)
6 Petitioner did not file objections, and the time to do so has passed.

7 According to 28 U.S.C. § 636(b)(1)(C), this Court performed a *de novo* review of this
8 case. Having carefully reviewed the matter, the Court concludes the Findings and
9 Recommendations are supported by the record and proper analysis. Thus, the Court must address
10 whether a certificate of appealability should issue.

11 A petitioner seeking a writ of habeas corpus has no absolute entitlement to appeal a
12 district court’s denial of his petition, and an appeal is only allowed in certain circumstances.
13 *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C. § 2253. If a court denies a habeas
14 petition on the merits, then it may only issue a certificate of appealability “if jurists of reason
15 could disagree with the district court’s resolution of [the petitioner’s] constitutional claims or that
16 jurists could conclude the issues presented are adequate to deserve encouragement to proceed
17 further.” *Miller-El*, 537 U.S. at 327; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). While
18 Petitioner is not required to prove the merits of his case, he must demonstrate “something more
19 than the absence of frivolity or the existence of mere good faith on his ... part.” *Miller-El*, 537
20 U.S. at 338. In the present case, reasonable jurists would not find the Court’s determination that
21 the petition should be denied debatable or wrong, or that Petitioner should be allowed to proceed
22 further. Petitioner did not make the required substantial showing of the denial of a constitutional
23 right. Therefore, the Court declines to issue a certificate of appealability. Based upon the
24 foregoing, the Court **ORDERS**:

- 25 1. The Findings and Recommendations issued on February 26, 2024 (Doc. 12) are
26 **ADOPTED IN FULL.**
- 27 2. The petition for writ of habeas corpus is **DENIED.**
- 28 3. The Clerk of Court is directed to close the case.

1 4. The Court declines to issue a certificate of appealability

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3 IT IS SO ORDERED.

4 Dated: **April 19, 2024**


UNITED STATES DISTRICT JUDGE